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## Let George Do It!

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## TRIBUTE TO PROFESSOR GEORGE W. DENT

The editors of the Case Western Reserve Law Review respectfully dedicate this issue to Professor George W. Dent.

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Let George Do It!

*Randy E. Barnett<sup>†</sup>*

It is my honor and pleasure to voice my praise for George Dent upon his retirement. I have known George since I was a very junior professor at the Chicago-Kent College of Law. Notwithstanding my “juniority,” he always treated me with respect and took an interest in my ideas and my development as an academic. But it was not until the past few years that I have had the pleasure of working closely with George.

Although we have known each other a long time, it was not until the formation of the Law Professors Division of the Federalist Society for Law and Public Policy that I became fully aware that he was a political conservative. As a libertarian myself, I never held this against him, though he was always a curmudgeonly sort of conservative. To the contrary, I found that aspect of his personality endearing.

But what I found most endearing was George’s refusal to take for granted the existing woeful underrepresentation of conservatives and libertarians on law school faculties. And rather than grumble about it—or, more precisely, *in addition* to grumbling about it—he resolved to actually do something about it. So, a few years ago, he assembled by email a small group of likeminded law professors to reach out to the Association of American Law Schools (“AALS”) to see if they might be induced to take some action.

We all knew this was going to be either an uphill struggle or like beating one’s head against the wall—or more like beating one’s head against a wall while walking uphill. So we corresponded and discussed, but George simply would not let any of us go about our business until we did something. And so we did. We asked for a meeting with the Executive Committee of the AALS, but were refused. So we met with the then-AALS President Dan Rodriguez and its Executive Director,

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my former Georgetown colleague Judy Areen. In our meeting we made suggestions for what the AALS might do to help rectify the imbalance.

Partially as a result, several conservatives and libertarians were asked by the AALS to serve on various committees. George himself was invited to be on the Program Committee. I was asked to be on the Planning Committee for the New Law Teachers Conference and a political conservative is now the current Planning Committee chair. Eventually, the Executive Committee relented and agreed to meet with a subset of us at its annual meeting during the AALS in New York City, where we enunciated our list of grievances.

When, after a year, we received no response from the Executive Committee about our requests, George led us in drafting an open letter to the AALS which I published on the Volokh Conspiracy, where I blog. In it he chronicled our efforts and the lack of responsiveness by the AALS. Twenty-seven law professors signed along with George.<sup>1</sup> Although this letter provoked an immediate reply, it elicited no further action.

But George was indefatigable. He then suggested we plan a conference on intellectual diversity to be an official “symposium” at the annual meeting in San Diego in January, 2018, on “Why Intellectual Diversity Matters (and What Is To Be Done).” Here is a portion of how the proposal he drafted read:

We propose a half-day Symposium on the lack of intellectual diversity on law school faculties at the January, 2018 Annual Meeting. Section 6-1(b)(ii) of its Bylaws states that the AALS “expects its member schools to value [*inter alia*] diversity of viewpoints.” The AALS has shown serious concern about, and has taken steps to address, the lack of other kinds of diversity in law schools, but it has shown little concern about, and has done very little to address, the lack of viewpoint diversity. The purpose of the proposed Symposium is to begin a conversation about the lack of intellectual diversity.

The lack of intellectual diversity on law school faculties is well established.<sup>2</sup> The proposed Symposium will explore three major

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1. See Randy Barnett, *Our Letter to the Association of American Law Schools, VOLOKH CONSPIRACY* (Feb. 25, 2017), [https://www.washingtonpost.com/news/volokhconspiracy/wp/2017/02/25/our-letter-to-the-association-of-american-law-schools/?utm\\_term=.1fec883b55c5](https://www.washingtonpost.com/news/volokhconspiracy/wp/2017/02/25/our-letter-to-the-association-of-american-law-schools/?utm_term=.1fec883b55c5) [<https://perma.cc/UB6K-LXLT>].
  2. See, e.g., John O. McGinnis & Matthew Schwartz, *Conservatives Need Not Apply*, WALL. ST. J., (Apr. 1, 2003), <https://www.wsj.com/articles/SB104916382927878800> [<https://perma.cc/57RV-JCTP>] (noting that, from 1994 to 2000, 74% of political donations of \$200 or more made by law professors at the top 22 U.S. law schools were made to Democratic

issues. First, *why* is there so little intellectual diversity on law faculties? Panelists will discuss studies finding that political prejudice is potentially stronger than racial prejudice.<sup>3</sup> There is a perception on both the left and the right that academia is welcoming to those on the left and unfriendly to those on the right.<sup>4</sup> The possible explanations for this perception and for the paucity of conservatives and libertarians in academia will be explored.

Second, the Symposium will discuss the effects of the lack of intellectual diversity on teaching and students. Law students often hear only one side of the debate over major public issues. When they leave school, they may be barely aware of and inadequately prepared to deal with arguments from the other side. This could put them out of touch with the judiciary, which mirrors the ideological diversity of American society. Panelists will discuss whether this is a real problem and, if so, how serious it is and what can be done about it.

The lack of intellectual diversity also affects the quality of legal scholarship. Psychologists recognize that when only one side is represented, a discussion becomes an echo-chamber that gravitates toward the more extreme views of that side. This phenomenon may put legal scholarship out of touch with the more diverse judiciary. In several cases, most legal scholars underestimated arguments that prevailed in court, probably because so few academics advanced those arguments.<sup>5</sup> Scholarship suffers when dominant views go unchallenged. However, conservative and libertarian scholars now often feel compelled to hide their views, at least until they gain tenure.

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candidates); Jim Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2003*, 39 HARV. J. L. & PUB. POL'Y 89, 93 (2013) (measuring the proportional representation of diversity in law school faculty and noting that the three most underrepresented groups are Republicans of both genders, Protestants, and Catholics).

3. See, e.g., Shanto Iyengar & Sean J. Westwood, *Fear and Loathing across Party Lines: New Evidence on Group Polarization*, 59 AM. J. POL. SCI. 690 (2015).
4. See, e.g., NEIL GROSS, WHY ARE PROFESSORS LIBERAL AND WHY DO CONSERVATIVES CARE (2013).
5. See Jonathan H. Adler, *Why Did Legal Elites Underestimate the Case Against the Mandate?*, THE VOLOKH CONSPIRACY (Mar. 30, 2012 11:53 AM), <http://volokh.com/2012/03/30/why-did-legal-elites-underestimate-the-case-against-the-mandate/> [https://perma.cc/8UAG-CM8T]; Randy E. Barnett, *No Small Feat: Who Won the Health Care Case (and Why Did So Many Law Professors Miss the Boat?)*, 65 FLA. L. REV. 1331, 1331, 1346 (2013); Josh Blackman, *Obamacare and Man at Yale*, 2014 ILL. L. REV. 1241, 1243 (2014).

Lopsidedly partisan scholarship may exacerbate the increasingly venomous political polarization of American society. Panelists will debate whether this is a problem, and, if so, what should be done about it.

Third, the Symposium will discuss what (if anything) should be done about the lack of intellectual diversity on law faculties. Organizations (like Heterodox Academy) have been created to publicize the problem the lack of intellectual diversity in academia generally. The American Council of Trustees and Alumni was created to activate university trustees and alumni to, *inter alia*, seek better intellectual diversity in academic faculties. Panelists will discuss what might be done by private foundations and by state and federal governments.

We propose to have an intellectually diverse panel of speakers.

I am very pleased to say that our proposal was accepted by the Planning Committee. And I have no doubt that acceptance was a result of George's perseverance in leading us to badger the AALS for the past few years. No doubt, they were relieved to be asked to do something as easy as accepting a proposal for a symposium. But I have little confidence it would have been accepted without the previous efforts. And, at any rate, it was George who was the driving force behind the symposium idea.

After we secured the symposium commitment, we were able to attract a marvelous roster of speakers. James Lindgren will open the event with a rendition of the cold cruel statistical facts about underrepresentation. Followed by a panel on "Why Intellectual Diversity Matters" featuring Josh Blackman, Laura Donohue, Carissa Hessick, and Rob MacCoun. Next, George, Gail Heriot, Dean Daniel Rodriguez, Steve Saunders, and Dean Kellye Testy will discuss "What is to be Done?"

Whether anything meaningful comes out of this remains to be seen, and will not be seen any time soon. But, unlike many, George takes the long view. And he asks not what others can do for him, but what he can do to improve diversity in legal education. He just keeps plugging away. And I am confident that retirement will only give him more time to battle the establishment in the name of justice and intellectual diversity.

For this, as well as the kindness he showed me when I was a mere pup, I will always be grateful.